

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TRAVIS CUTSHAW)	
Claimant)	
VS.)	
)	
DILLARD'S DISTRIBUTION CENTER)	Docket No. 211,697
Respondent)	
Self-Insured)	

ORDER

Claimant appeals from a July 19, 1996, preliminary hearing order entered by Administrative Law Judge Robert H. Foerschler. The order denied claimant's request for medical treatment and temporary total disability benefits on the basis of a finding that claimant failed to establish injury arising out of and in the course of his employment.

ISSUES

Has claimant established by a preponderance of the credible evidence that his neck, shoulders, and/or back injuries arose out of and in the course of his employment?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the briefs of the parties, the Appeals Board concludes that the order of the Administrative Law Judge should be affirmed. Claimant testified that he fell at work on March 17, 1995, and that he notified his supervisor he had fallen. He also testified that his supervisor told him to take it easy the remainder of the day and others assisted him with his work duties the remainder of the day.

Claimant's version of the events is, however, contradicted by subsequent medical records. At the time of the alleged injury, claimant was scheduled to have surgery for removal of a pilonidal cyst from his tail bone. Following surgery, claimant recuperated for approximately eight weeks and saw numerous physicians. These medical records refer to back pain with an onset during the period of recuperation from surgery. The records of May 8, 1995, also show claimant reported that there had been no injury. The shoulder pains are described as idiopathic brachial plexopathy. Based upon these medical records, the Appeals Board concludes the decision of the Administrative Law Judge to deny benefits should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing order entered by Administrative Law Judge Robert H. Foerschler dated July 19, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS
Eric T. Lanham, Kansas City, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director